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270 NLRB No. 45

D--9503
Detroit, MI

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

BLOCK STEEL CORPORATION

and

Cases 7--CA--20559 and
7--CA--20751

UNITED STEELWORKERS OF AMERICA,
DISTRICT 29, AFL--CIO--CLC

DECISION AND ORDER

Upon charges filed by the Union 19 April 1982 in Case 7--CA--20559, and 3 June 1982 in Case 7--CA--20571, the General Counsel of the National Labor Relations Board issued a complaint in Case 7--CA--20559 3 June 1982 and a complaint in Case 7--CA--20751 16 July 1982 against the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act. On 13 September 1982 the Regional Director for Region 7, pursuant to the Board's Rules and Regulations, ordered the consolidation of Cases 7--CA--20559 and 7--CA--20751 and they were consolidated on that date.

On 20 September 1982 the General Counsel filed a Motion for Summary Judgment. On 23 September 1982 the Board issued an order transferring the proceeding to the Board and a Notice to Show cause why the motion should not be granted. The Respondent did not file a response to the Notice to Show Cause and the averments of the Motion for Summary Judgment and of the attached supporting exhibits stand uncontroverted.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

Further, according to Exhibits K and L submitted by the General Counsel, on 25 June 1982 in Case 7--CA--20559, and on 25 August 1982 in Case 7--CA--20751, the Regional Attorney for Region 7 notified the Respondent by mail of the consequences of failure to file an answer. No answers were received from the Respondent by 20 September 1982, the date of the Motion for Summary Judgment.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent is a Michigan corporation engaged in steel processing with its only office and place of business located in Detroit, Michigan, where it annually had gross revenues in excess of $500,000. In addition, the Respondent received goods and materials valued in excess of $50,000 directly from points outside the State of Michigan. The Respondent also manufactured, sold, and distributed products valued in excess of $50,000 which were shipped directly to points outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Since on or about 26 February 1982 the Respondent has failed and refused to bargain with the Union by unilaterally and without notice to the Union failing to pay vacation benefits which had accrued under the provisions of the then current collective-bargaining agreement described in section A above. Further, since on or about 3 December 1981, and continuing to date, the Respondent has failed and refused to bargain collectively with the Union by unilaterally and without notice to the Union failing to provide health, sickness, and accident and life insurance for the unit employees as provided for in the then current collective-bargaining agreement.

Accordingly, we find that the Respondent has, since on or about 3 December 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusals, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.[2]

The Remedy

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

As a result of the Respondent's unlawful failure to bargain about the effects of its cessation of operations, the terminated employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their

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[2] Chairman Dotson considers this case to be a default judgment case and therefore it has no precedential value.

II. Alleged Unfair Labor Practices

A. The Unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, including shipping clerks and truck drivers employed by the Employer at its 13770 Joy Road, Detroit, Michigan facility; but excluding all office clerical employees, professional employees, confidential employees, and guards and supervisors as defined by the Act.

At all times material herein the Union has been and is the exclusive collective-bargaining representative of these employees by virtue of Section 9(a) of the Act and its collective-bargaining agreements with the Respondent, the most recent of which was effective from 15 March 1981 through 1 March 1982.

B. The Request to Bargain and Respondent's Refusal

About 26 February 1982 Respondent closed its plant and laid off all its employees. Commencing on or about 5 March 1982, the Union has requested that the Respondent bargain collectively with it about the effects upon the Respondent's employees, described in section A above, of the plant closing. Since on or about 5 March 1982 the Respondent has failed and refused to bargain collectively with the Union by not providing the Union a meaningful opportunity to bargain about the effects of the plant closing on the unit employees. The Board, with court approval, has long held that when an employer decides to terminate or close its entire operation it must, once that decision is made, afford the employees' collective-bargaining representative the opportunity to bargain over the import and effect of that decision on unit employees.[1]

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[1] Burgmeyer Bros., Inc., 254 NLRB 1027 (1981), and cases cited therein at fn. 5.

services, and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with the Union concerning the effects of the closing of its operations on its employees, and shall include in our Order a limited backpay requirement [3] designed both to make whole the employees for losses suffered as a result of the violation and to recreate in some practicable manner a situation in which the parties' bargaining is not entirely devoid of economic consequences for the Respondent. We shall do so in this case by requiring the Respondent to pay backpay to its employees in a manner similar to that required in Transmarine Corp.[4] Thus, the Respondent shall pay employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of the Respondent's operations on its employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good

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[3] We have indicated that backpay orders are appropriate means of remedying 8(a)(5) violations of the type involved herein, even when such violations are unaccompanied by a discriminatory shutdown of operations. Cf. Royal Plating Co., 148 NLRB 545, 548 (1964), and cases cited therein.

[4] 170 NLRB 389 (1968), 380 F.2d 933 (9th Cir. 1967), remanding 152 NLRB 998 (1965).

faith; but in no event shall the sum to any of these employees exceed the amount he or she would have earned as wages from 26 February 1982, the date on which the Respondent terminated its operations, to the time he or she secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ.[5] Interest on all such sums shall be paid in the manner prescribed in Florida Steel Corp., 231 NLRB 651 (1977). See generally Isis Plumbing Co., 138 NLRB 716 (1962).

Additionally, we shall order the Respondent to reimburse unit employees for all vacation pay which has accrued under the 13 March 1981 collective-bargaining agreement. We shall also require Respondent to reimburse unit employees for any monetary losses they may have suffered as a result of its failure to provide the insurance benefits mandated by the same collective-bargaining agreement. Any moneys due unit employees shall be computed in the manner prescribed in the preceding paragraph of this Remedy.

To further effectuate the policies of the Act, the Respondent shall be required to establish a preferential hiring list of all terminated unit employees following the system of seniority provided for in the collective-bargaining agreement and, if the Respondent ever resumes operations anywhere in the Detroit, Michigan area, it shall be required to offer these employees reinstatement. If, however, the Respondent were to resume its Detroit opera-

[5] Transmarine Corp., supra.

tion, the Respondent shall be required to offer unit employees reinstatement to their former or substantially equivalent positions.[6]

Furthermore, in view of the fact that the Respondent is no longer in operation and its former employees may be in different locations, we shall order the Respondent to mail each of its employees employed on the date it ceased operations copies of the attached notice signed by the Respondent.

On the basis of the foregoing facts and the entire record, the Board makes the following

Conclusions of Law

1. Block Steel Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Steelworkers of America, District 2, AFL--CIO--CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees constitute a unit appropriate for the purpose of collective-bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, including shipping clerks and truck drivers employed by the Employer at its 13770 Joy Road, Detroit, Michigan facility; but excluding all office clerical employees, professional employees, confidential employees, and guards and supervisors as defined by the Act.

4. Since at least 13 March 1981 the above-named labor organization has been and now is the exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

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[6] Drapery Mfg. Co., 170 NLRB 1706 (1968).

5. The Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act by (a) refusing to bargain with the Union on and after 5 March 1982 about the effects of its plant closing on the unit employees; (b) refusing to bargain with the Union on and after 26 February 1982 by unilaterally and without notice failing to pay the unit employees vacation benefits which had accrued under the provisions of the collective-bargaining agreement which was effective from 13 March 1981 to 1 March 1982; and (c) refusing to bargain with the Union on and after 3 December 1981 by unilaterally and without notice failing to provide health, sickness, and accident and life insurance for the unit employees as provided for in the aforementioned collective-bargaining agreement.

6. By the aforesaid refusals to bargain the Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Block Steel Corporation, Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Steelworkers of America, District 29, AFL--CIO--CLC, with respect to the effect on its employees of its decision to close its operation.

(b) Refusing since 26 February 1982 to pay unit employees vacation benefits accrued under the 13 March 1981 collective-bargaining agreement.

(c) Refusing since 3 December 1981 to provide unit employees with insurance benefits as provided for in the 13 March 1981 collective-bargaining agreement.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Pay the terminated employees their normal wages for the period set forth in the remedy section of this Decision and Order.

(b) Upon request, bargain collectively with the above-named labor organization with respect to the effects on its employees of its decision to terminate its operations and reduce to writing any agreement reached as a result of such bargaining.

(c) Establish a preferential hiring list of all employees in the appropriate unit, following the system of seniority provided for under the collective-bargaining contract with the Union and, if operations are ever resumed anywhere in the Detroit, Michigan area, offer reinstatement to those employees. If, however, the Respondent were to resume its operations at the Detroit facility, it shall offer all those in the appropriate unit reinstatement to their former or substantially equivalent positions.

(d) Reimburse the unit employees and make them whole for any loss of vacation benefits and insurance benefits in the manner specified in the remedy section of this Decision and Order.

(e) Preserve and, upon request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Mail a copy of the attached notice marked ''Appendix''[7] to each employee in the appropriate unit who was employed by the Respondent at its Detroit facility immediately prior to the Respondent's cessation of operations on 26 February 1981. Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt thereof, as hereinabove directed.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. 30 April 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Patricia Diaz Dennis, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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[7] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Steelworkers of America, District 29, AFL--CIO--CLC, with respect to the effect on our employees of our decision to close our Detroit, Michigan plant.

WE WILL NOT refuse to pay accrued vacation benefits to our employees.

WE WILL NOT refuse to provide employees with insurance benefits as provided for in the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain collectively with United Steelworkers of America, District 29, AFL--CIO--CLC, concerning the effects of our decision to close our Detroit, Michigan plant on employees who were employed there, and will reduce to writing any agreement reached as a result of such bargaining.

WE WILL pay the employees who were employed at the above plant their normal wages for a period required by a Decision and Order of the National Labor Relations Board.

WE WILL reimburse, with interest, the employees who were employed at our Detroit plant for any losses in vacation and insurance benefits due to our refusal to provide them.

WE WILL establish a preferential hiring list of all terminated employees in the bargaining unit, which is made up of all production and maintenance employees, including shipping clerks and truckdrivers, employed by us at our Detroit plant, following the seniority system provided for in the collective-bargaining agreement with the Union, and, if we resume operations anywhere in the Detroit area, we shall offer these employees reinstatement. If, however, we resume our operation at the Detroit plant, said unit employees shall be offered reinstatement to their former or substantially equivalent positions.

BLOCK STEEL CORPORATION

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Patrick V. McNamara Federal Building, Room 300, 477 Michigan Avenue, Detroit, Michigan 48226, Telephone 313--226--3244.